IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1259 OF 2004

Municipal Corporation of Gr. Mumbai .. Appellants

Versus

Smt. Sushila Maruti Patole & Ors. .. Respondents

Mr.A.J.Bhor for appellants

Mr.M.B.Kotak for respondents

CORAM : P.V.KAKADE,J.

DATE : 14th DECEMBER,2004

P.C.:

1. Heard the learned counsel for both the parties.

2. Rule. Rule made returnable forthwith.

3. This is an appeal preferred by the

appellant-Municipal Corporation against the Judgment and Order passed by Motor Accident Claims Tribunal, Mumbai allowing the application of the claimants for compensation under the provisions of the Motor Vehicles Act. The learned Member of the MACT Mumbai awarded the compensation of Rs.1,90,000/= along with interest @ 9% p.a. from the date of filing of the claim till the amount was realised.

4. On 31.12.1991 at about 5.30 p.m. the deceased was proceeding on the bicycle from Vasantrao Naik Marg, Chembur, Sion Road. When he reached in front of Rahul Nagar No.2, offending vehicle No.MRL-8876 came in very fast speed from behind and dashed to the deceased, who was on the bicycle. As a result of which he fell down and sustained serious injuries on his head and other parts of the body. He was removed to the Hospital but succumbed to his injuries on 2.1.1992. Hence the application under Section 166 of the M.V. Act came to be filed for compensation of Rs.5 lacs.

. The appellant Corporation filed their written statement raising various objections admitting the fact that the vehicle belonged to them but stated that it was

not involved in the accident, as alleged by the claimants. They further submitted that it is not correct that the vehicle in question came in very fast speed from behind and dashed to the deceased bicycle in front of Rahul Nagar No.2 and caused him fatal injuries. According to the appellant-Corporation Driver D'Souza was handed over the vehicle for his duty in the second shift on 31.12.1991 and when he was proceeding via road from Deonar Shivaji Nagar one traffic constable stopped his vehicle at Sion Signal and requested him to take him to the police station. However, the said constable handed the said driver to the R.T.O. office with the allegation that the said driver had committed an accident and on such other grounds the application was sought to be dismissed.

5. The learned Member of the MACT adjudicated the dispute on merits and came to the conclusion that the vehicle in question which was involved in the accident, in fact was witnessed by a Police Constable, who stopped the offending vehicle and arrested the driver and came to the hospital and lodged FIR. It was further concluded that the driver in question was driving the vehicle in rash and negligent manner, as a result of

which the accident had occurred. On assessing the evidence on record the learned Member of the MACT came to the conclusion that the compensation of Rs.1,90,000/= would be a proper compensation and passed award accordingly. Hence this appeal.

6. After hearing both the sides and perusing the record which is available in compilation, I am satisfied that the learned Member of the MACT has appreciated the evidence in proper and correct manner. It was submitted on behalf of the Corporation that deceased was travelling on bicycle but the said bicycle was not seized, which aspect shows that the deceased was not travelling on the bicycle and therefore the entire claim is rendered false. However, on perusal of the entire evidence including the testimony of eye witness Vijay Jadhav, who is a Police Constable, I am satisfied that mere non seizure of the bicycle would not render the entire case has false, because as observed by the learned Member of the MACT, possibility of removing bicycle from the spot cannot be ruled out before the police had visited the spot and therefore merely because the bicycle was not found on the spot and it was not

seized by the Police, it cannot be said that the entire case is false.

7. So far as quantum of compensation allowed is concerned, the learned Member has properly calculated the relevant heads under which the claimants were entitled to the compensation whereby he has come to the conclusion that Rs.1,90,000/= was proper compensation. I do not intend to interfere with the relevant findings of fact recorded by the learned Member.

8. In other words, the appeal is required to be dismissed in limine as no interference is called for at all in the said judgment. Hence the appeal stands dismissed in limine.

9. Consequently the civil application also stands dismissed with no order as to costs.